

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
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UNITED BANK
Springdale, Arkansas
OTS Docket No. 07756

Order No.: MWR-04-11

Date: July 2, 2004

CONSENT ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, United Bank, Springdale, Arkansas (Bank or Association) (OTS Docket No. 07756), by and through its Board of Directors (Board), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief (Stipulation); and

WHEREAS, the Association, by execution of this Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist for Affirmative Relief (Order) by the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1818(b).¹

WHEREAS, the Deputy Director of the OTS has delegated to the Regional Directors of OTS the authority to issue Orders to Cease and Desist on behalf of OTS where the Association has consented to the issuance of the Order.

NOW THEREFORE, IT IS ORDERED THAT the Bank, its directors, officers, employees, and agents shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, aiding or abetting of any unsafe or unsound practice or any violation of:

- A. Section 560.101 of the OTS Regulations, 12 C.F.R. § 560.101 (regarding real estate lending standards);
- B. Section 560.170 of the OTS Regulations, 12 C.F.R. § 560.170 (regarding records for lending transactions);
- C. Section 562.1 of the OTS Regulations, 12 C.F.R. § 562.1 (regarding financial reporting);
- D. Section 563.39 of the OTS Regulations, 12 C.F.R. § 563.39 (regarding employment contracts);

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

- E. Section 563.41 of the OTS Regulations, 12 C.F.R. § 563.41 (regarding transactions with affiliates, including but not limited to documentation of transactions with affiliates);
- F. Section 563.161 of the OTS Regulations, 12 C.F.R. § 563.161 (regarding management and financial policies);
- G. Section 563.170(c) of the OTS Regulations, 12 C.F.R. § 563.170(c) (regarding books and records);
- H. The guidelines set forth in Section II.A.1 of Appendix A to Part 570 of the OTS Regulations, 12 C.F.R. Part 570 (regarding organizational structure);
- I. The guidelines set forth in Section II.A.2 of Appendix A to Part 570 of the OTS Regulations, 12 C.F.R. Part 570 (regarding loan documentation);
- J. Sections 226.17, 226.18, and 226.19 of Regulation Z of the Board of Governors of the Federal Reserve System, 12 C.F.R. §§ 226.17, 226.18, and 226.19 (regarding Truth in Lending);
- K. Sections 3500.7, 3500.8, and 3500.21 of Regulation X of the Department of Housing and Urban Development, 24 C.F.R. §§ 3500.7, 3500.8, and 3500.21 (regarding the Real Estate Settlement Procedures Act);
- L. Sections 202.9, 202.13, and 202.14 of Regulation B of the Board of Governors of the Federal Reserve System, 12 C.F.R. §§ 202.9, 202.13, and 202.14 (regarding Equal Credit Opportunity); and
- M. Section 615(a) of the Federal Credit Reporting Act, 12 U.S.C. § 1681m(a).

IT IS FURTHER ORDERED THAT:

CORRECTIVE PROVISIONS

1. Business Plan

- A. By no later than August 31, 2004, the board of directors of the Bank (Board) shall adopt and submit to the Regional Director a new, written, detailed three-year business and strategic plan (Business Plan), acceptable to the Regional Director, that:
 - 1. Provides financial projections for three years, on a quarterly basis, that (a) includes major balance sheet and income statement components for the Bank and its subordinate organizations, and (b) sets forth the Bank's tangible, core and risk-based capital;
 - 2. Provides for tangible capital, core capital, and risk-based capital of at least 8.4%, 8.4%, and 11.0%, respectively, by no later than December 31, 2004, and thereafter (unless otherwise approved by the Regional Director);

3. Provides for an analysis of the adequacy of the Bank's liquidity;
 4. Provides a strategic plan for the restoration of mortgage banking operations that existed prior to the Bank's involvement with UB Mortgage, LLC (UBM) that does not provide for either (a) any transaction with UBM or (b) any sharing of employees or software with any affiliate or other party;
 5. Provides for no dividend until at least 2005;
 6. Addresses any and all proposed transfers of assets or liabilities between the Bank or any of its subsidiaries and any of its affiliates;
 7. Takes into consideration all policies, plans, and agreements adopted, or to be adopted, by the Bank in accordance with either this Order or the directives set forth in the ROE;
 8. Provides an analysis of the Bank's future staffing needs, the cost structure associated with those needs, the cost containment procedures in place in the event that the Bank does not attain its budgeted lending volumes, and the volumes of originations needed in order for the Bank to attain a break-even profit level in its mortgage lending and mortgage banking operations;
 9. Incorporates all requirements of this Order;
 10. Describes in detail all assumptions used, including the assumed economic environment, interest rate, and strategy scenario for each interest earning asset and interest cost liability over the term of the Business Plan; and
 11. Provides an alternative business strategy if the level of mortgage lending (including originations in mortgage banking operations) remains unchanged over the term of the Business Plan.
- B. Except as otherwise authorized through the prior, written notice of non-objection by the Regional Director, the Bank shall comply with the Business Plan.
- C. After implementation of the Business Plan, the Bank's management shall submit to the Board quarterly variance reports. The Board shall assess, on a quarterly basis, (1) whether the Bank can meet the projections in the Business Plan and (2) whether the Board should revise the goals and projections. The Bank shall submit a copy of the variance report to the Regional Director for review and shall submit any revisions to the Business Plan to the Regional Director for review and a notice of non-objection by no later than ten (10) calendar days after the Board meeting.

2. **Capital**

- A. By no later than June 30, 2004, the Board shall recalculate the capital figures for the Bank as of December 31, 2003, and as of March 31, 2004, excluding all reported non-cash capital contributions received since July 1, 2002, that were not approved by the OTS and resubmit to the OTS Thrift Financial Reports to reflect such recalculations.
- B. The Bank shall, at all times on and after December 31, 2004, maintain tangible and core capital of at least 8.4 percent and risk-based capital of at least 11.0 percent unless otherwise approved in writing by the Regional Director.

3. **Restrictions on Asset Growth**

The Bank shall not, except pursuant to the written non-objection of the Regional Director or pursuant to a Business Plan that is acceptable to the Regional Director, increase its assets in any calendar quarter in excess of the amount of the net interest credited on its deposit liabilities during that calendar quarter.

4. **Transactions with Affiliates**

- A. Effective immediately, neither the Bank nor any of its subsidiaries shall engage in any transaction with UBM without the prior written notice of non-objection of the Regional Director.
- B. Effective immediately, neither the Bank nor any of its subsidiaries shall engage in any transaction with any of its affiliates without the prior written notice of non-objection of the Regional Director. For purposes of this subsection of the Order, the Regional Director hereby provides prior written notice of non-objection to United Bilt Service Corporation to make purchases of building materials from United Builders Construction and Supply, Inc., provided that such purchases are made in accordance with 12 C.F.R. § 563.41, are documented to demonstrate compliance with all requirements of that regulation, and otherwise are safe and sound and in compliance with all applicable laws and regulations.
- C. By no later than August 31, 2004, the Board shall adopt and submit to the Regional Director a written Transactions With Affiliates Policy, acceptable to the Regional Director, that:
 - 1. Requires Board approval of all transactions of the Bank or any of its subsidiaries with any of the Bank's affiliates; and
 - 2. Requires compliance with 12 C.F.R. § 563.41 on all transactions of the Bank or any of its subsidiaries with any of the Bank's affiliates.
- D. The Bank and its subsidiaries shall comply with the Transactions With Affiliates Policy.

E. By no later than July 31, 2004, the Board shall cause the Bank to retain a person, acceptable to the Regional Director, to prepare and submit to the Board, by no later than September 30, 2004, a written TWA Audit Report. Such person shall be either (1) a competent and independent (as defined in Section 17 of this Order) certified accountant, or (2) a competent and independent (as defined in Section 17 of this Order) financial/legal firm. The TWA Audit Report shall follow a detailed review of each transaction between the Bank or any subsidiary of the Bank with an affiliate, officer, or director of the Bank between January 1, 1998, and the Effective Date. The TWA Audit Report shall set forth:

1. a verification and analysis of all cash flow to or from the Bank or any subsidiary of the Bank on each of these transactions;
2. a verification and analysis of all goods and services flowing to or from the Bank or any subsidiary of the Bank on each of these transactions;
3. a verification and analysis of the costs and expenditures associated with the goods and services analyzed pursuant to subsection 4.E.2. of this Order;
4. an analysis of whether the costs and expenses of the goods and services so analyzed were accompanied by appropriate compensation received by the Bank and its subsidiaries in accordance with applicable statutes and regulations, including but not limited to 12 C.F.R. § 563.41;
5. a verification and analysis of all payments made by the Bank or any subsidiary of the Bank for the acquisition of, or other costs and expenditures associated with (a) land in Rogers, Arkansas, (b) a building located at 2790 South Thompson in Springdale, Arkansas, or (c) an ATM located at the Bank's main office; and
6. a determination, based on the verification and analysis required by this subsection 4.E, of the amount owed (including interest at the maximum rate of interest authorized under Arkansas law on judgment debt) by affiliates to the Bank (or its subsidiaries) in order to make the Bank (or its subsidiaries) whole on all transactions between January 1, 1998, and the Effective Date between the Bank (or any of its subsidiaries) and any of the affiliates of the Bank and noting the amount owed by each affiliate.

F. By no later than two (2) business days after receipt of each invoice for the services required by subsection 4.E hereof, the Bank shall submit to United Holding Company, Inc. (UHC) a copy of such invoice and demand that the invoice be promptly paid by UHC.

G. By no later than August 31, 2004, the Board shall adopt and submit to the Regional Director a detailed, written plan, acceptable to the Regional Director, addressing actual

and contingent legal risks to the Bank or any of its subsidiaries related to transactions with UBM since the time of UBM's establishment (UBM Plan). This UBM Plan shall:

1. Include a detailed description of each and all transactions that have occurred between UBM and the Bank or any subsidiary of the Bank;
 2. Incorporate a written legal opinion to the Bank addressing (a) all actual and contingent legal risks of the Bank or any subsidiary of the Bank associated with those transactions and (b) the effect of the UBM Plan on such legal risks. This legal opinion shall be prepared by competent, independent (as defined in Section 17 of this Order) counsel;
 3. Include a written agreement with UHC whereby UHC holds the Bank harmless and indemnifies it from all losses on all transactions that the Bank has had with UBM;
 4. Include a written legal opinion, written by independent (as defined in Section 17 of this Order) counsel of the Bank, opining that the written agreement required by subsection 4.G.3 of this Order is legally binding; and
 5. Include documentation of what the Bank will do in order to obtain compensation and indemnification for any and all losses and liability (actual and contingent) resulting from these violations, including but not limited to the transfer of its mortgage operations to UBM.
- H. By no later than August 31, 2004, the Bank shall identify all expenditures it has made for the acquisition, construction, or maintenance of land in Rogers, Arkansas, or the building at 2790 South Thompson in Springdale, Arkansas and all other expenses associated with that land or that building and shall demand from UHC immediate reimbursement of all such expenditures and payments with interest at the maximum rate of interest authorized under Arkansas law on judgment debt.
- I. By no later than August 31, 2004, the Board shall cause the Bank to enter into a ground lease of the land at 2790 South Thompson in Springdale, Arkansas, whereby UHC will pay Bank for use of that land, retroactive from the date construction began on that building. This ground lease shall comply with all applicable laws and regulations, including but not limited to Section 563.41 of the OTS Regulations, 12 C.F.R. § 563.41. Nothing herein authorizes any violation of Section 563.200 of the OTS Regulations, 12 C.F.R. § 563.200.
- J. In the case of each arrangement that the Bank or a subsidiary of the Bank has with an affiliate of the Bank to lease space or share expenses (including but not limited to the sharing of employee expenses), the Bank (or its subsidiary, if appropriate) shall, by no later than July 31, 2004, either cease such arrangement or else enter into a written, formal agreement with the affiliate(s) to continue such arrangement. Any such written, formal agreement shall comply with 12 C.F.R. § 563.41 and shall be accompanied by a written

legal opinion to the Bank by competent, independent (as defined in Section 17 of this Order) counsel. Such legal opinion shall advise the Bank that the corresponding agreement complies with all applicable laws, regulations, and OTS policies, including but not limited to 12 C.F.R. § 563.41. Any such written, formal agreement shall be at, or better for the Bank than, market terms and conditions and be accompanied by documentation that will demonstrate this. Any such agreement that does not call for flat fee payments shall set forth a detailed process by which the payments will be determined.

- K. The Board shall review each of the Bank's agreements with its affiliates and the supporting documentation at least once during each calendar year and more frequently as deemed appropriate in the exercise of prudent business judgment. Following such review, the Board shall promptly take action as necessary to enter into any amendments or new contracts required in order to comply with 12 C.F.R. § 563.41 and 12 C.F.R. § 223.51.
- L. By no later than October 11, 2004, and thereafter, the Bank shall take all necessary actions to obtain reimbursement from its affiliates for the amounts determined to be owed the Bank and its subsidiaries, as determined pursuant to subsection 4.E.6 of this Order. This shall include, but not be limited to, the submission of a demand letter to UHC for amounts owed by UHC and UHC's subsidiaries to the Bank (or its subsidiaries).

5. Reports and Documentation

By no later than August 31, 2004, the Board shall adopt and submit to the Regional Director a written Reports and Documentation Policy, acceptable to the Regional Director, designed to establish an adequate system of records of all transactions between the Bank (or any of its subsidiaries) and any of its affiliates and otherwise to ensure compliance by the Bank and its subsidiaries with 12 C.F.R. §§ 560.170, 562.1, 563.41(c)(3), and 563.170(c). The Bank shall comply with the Reports and Documentation Policy.

6. Mortgage Banking Activities

The Bank and its subsidiaries shall not engage in mortgage banking activities except for those within the following parameters:

- A. The level of activity shall not exceed the lending volumes generated by Bank's mortgage banking operation prior to its involvement with UBM without the prior written notice of non-objection of the Regional Director.
- B. Except for legally binding commitments to close mortgage loans in the mortgage pipeline, and except in accordance with the prior written notice of non-objection by the Regional Director, these mortgage banking activities shall not involve any transactions with UBM, including, but not limited to, purchase or sale of loans or sharing of employees or computer software. For each such loan that falls within the above-stated exception, the Bank shall provide this office with a copy of a written legal opinion,

directed to the Bank, opining that the Bank has a legally binding obligation to make or purchase that loan.

- C. No employment contract, profit sharing arrangement, or other compensation plan shall be transferred from UBM to the Bank.
- D. The Bank shall conduct its mortgage banking activities, if any, in a safe and sound manner and in accordance with all applicable laws, regulations, and OTS policy.

7. Corporate Governance

- A. By no later than August 31, 2004, the Board shall adopt and submit to the Regional Director a written Corporate Separateness Policy that is acceptable to the Regional Director. The Corporate Separateness Policy shall set forth procedures designed to ensure that the Bank will maintain proper corporate separateness from its affiliates and subsidiaries. The Corporate Separateness Policy shall be accompanied by a written legal opinion to the Bank by competent, independent counsel (as independent is defined in Section 17 of this Order). This legal opinion shall opine on the adequacy of the Corporate Separateness Policy for purposes of ensuring that the corporate separateness of the Bank and the corporate separateness of each subsidiary of the Bank will be adequately protected through compliance with the Corporate Separateness Plan. The Bank shall comply with the Corporate Separateness Plan.
- B. By no later than August 31, 2004, the Board shall adopt and submit to the Regional Director a written Corporate Communications Policy, acceptable to the Regional Director, designed to ensure that all material transactions, procedures, and activities of the Bank are promptly and accurately communicated to the Bank's chief executive officer, acting in that capacity, and the Board. The Bank shall comply with the Corporate Communications Policy.
- C. By no later than August 31, 2004, the Board shall adopt and submit to the Regional Director a written Conflicts of Interest and Usurpation of Corporate Opportunity Policy, acceptable to the Regional Director, that is designed to prevent violations of 12 C.F.R. §§ 563.200 and 563.201 by the Bank's officers, directors, employees, and other insiders. The Bank shall comply with the Conflicts of Interest and Usurpation of Corporate Opportunity Policy.

8. Training for Directors and Senior Management

- A. By August 31, 2004, the Board shall adopt and submit to the Regional Director a written plan (Training Plan), acceptable to the Regional Director, for the training of senior executive officers and Board members regarding the legal requirements for transactions with affiliates, documentation, corporate governance, avoiding conflicts of interest, and avoiding usurpation of corporate opportunity. The Bank shall implement its Training Plan.

- B. The Board shall ensure that in-depth training, as set forth in the Training Plan, is provided to all senior executive officers and members of the Board by December 31, 2004.

9. **Compensation Arrangements**

- A. For purposes of this section, the term "employment contract" includes any contract by the Bank or any of its subsidiaries with an individual to pay compensation in any form for any past, current, or anticipated future services as an officer, director, consultant, or other agent of the Bank, any subsidiary of the Bank, or any affiliate of the Bank.
- B. Neither the Bank nor any of its subsidiaries shall enter into any employment contract until and unless the Bank receives a written notice of non-objection from the Regional Director. The Bank shall not seek such written notice of non-objection from the Regional Director until:
1. The Bank submits to the Regional Director a copy of a written legal opinion to the Bank from competent, independent legal counsel (as independent is defined in Section 17 of this Order) that opines (a) that the employment contract complies with all applicable laws and regulations, including but not limited to 12 C.F.R. §§ 563.39 and 563.161, and with all applicable OTS policies, including but not limited to the guidelines set forth in Section 310 of the OTS Thrift Activities Handbook and (b) sets forth the process by which the employment contract may be terminated for cause without triggering liability;
 2. The Bank submits to the Regional Director a Board Resolution concluding that the employment contract is in the best interest of the Bank, setting forth the reasons supporting that conclusion; and
 3. The Bank submits to the Regional Director a statement that notes which persons acted for the Bank in encouraging, negotiating, and drafting the employment contract.
- C. By no later than June 30, 2004, the Bank shall submit to the Regional Director:
1. A copy of all outstanding employment contracts to which the Bank or any of its subsidiaries is a party.
 2. A written legal opinion to the Bank from competent, independent (as defined in Section 17 of this Order) counsel addressing each such outstanding employment contract and any employment contract into which the Bank or any subsidiary of the Bank has entered with Jim T. Bell (regardless of whether any such contract remains outstanding) and opining on:
 - (a) whether each such contract complies with all applicable laws, regulations, and OTS policies; and

- (b) if it does not so comply, noting the actual or potential liability of the Bank or any of its subsidiaries under such contract and what the Bank should do to eliminate or mitigate such liability.
- D. By no later than July 31, 2004, the Board shall adopt and submit to the Regional Director a written, detailed Compensation Policy, acceptable to the Regional Director, that governs compensation of all officers, employees, and consultants of the Bank and its subsidiaries. The Compensation Policy shall require compliance with all applicable laws, regulations, and OTS policies, including but not limited to those set forth in 12 C.F.R. §§ 563.39 and 563.161, Section 310 of the OTS Thrift Activities Handbook and Section III of Appendix A to 12 C.F.R. Part 570. The Compensation Policy further shall require that the Bank and the Bank's subsidiaries pay no bonuses that are based on the volume of loan production and shall require that they pay no bonuses other than on the basis of equity and long-term values and goals. The Bank and its subsidiaries shall implement and comply with this Compensation Policy.
- E. The Bank shall not make any "golden parachute payments" (as that term is defined in 12 U.S.C. § 1828(k) and 12 C.F.R. Part 359), except as permitted under the applicable statute and regulation.

10. Composition of Board and Management

- A. By no later than August 31, 2004, the Board shall, subject to subsection 10.E of this Order, ensure that there is an additional member of the Board who is independent (as defined in Section 17 of this Order).
- B. By no later than August 31, 2004, subject to subsection 10.E of this Order, the Board shall ensure that the Bank has a chief executive officer who:
 - 1. has all duties, responsibilities, and authority that are normally held by chief executive officers in the savings and loan association industry; and
 - 2. does not serve as an officer, director, employee, consultant, or agent of UHC, any subsidiary of UHC (excluding the Bank and all subsidiaries of the Bank), or any other affiliate of the Bank.
- C. By no later than August 31, 2004, the Board shall, subject to subsection 10.E of this Order, ensure that the Bank has a chief lending officer who:
 - 1. has all duties, responsibilities, and authority that are normally held by chief lending officers in the savings and loan association industry;
 - 2. does not also serve as chief executive officer of the Bank; and

3. does not serve as an officer, director, employee, consultant, or agent of UHC, any subsidiary of UHC (excluding the Bank and all subsidiaries of the Bank), or any other affiliate of the Bank.
- D. If UBM continues as an affiliate of the Bank after the Effective Date, then neither the Bank nor any of its subsidiaries shall, after the Effective Date, have or use any director, officer, employee, consultant, or agent who is a stockholder (or member, partner, or similar interest holder), director, officer, employee, consultant, or agent of UBM, except in accordance with the prior written notice of non-objection by the Regional Director.
- E. The Association shall comply with Section 563.560 of the OTS Regulations, 12 C.F.R. § 563.560, regarding the employment or designation of senior executive officers, the appointment or replacement of any director, or a change in responsibilities of a senior executive officer.

11. Management Direction

- A. The Board shall take all actions necessary to ensure that no officer, director, or employee of the Bank or any subsidiary of the Bank will take any direction, directly or indirectly, from Donald R. Pitts.
- B. The officers, directors, and employees of the Bank and of each of its subsidiaries shall not take any direction, directly or indirectly, from Donald R. Pitts.
- C. Donald R. Pitts shall not act on behalf of the Bank or any of its subsidiaries, commit the Bank or any of its subsidiaries to any obligation, or execute any document on behalf of the Bank or any of its subsidiaries. The Board shall take all necessary actions to ensure that Donald R. Pitts does not violate this subsection.
- D. Nothing herein shall prohibit Donald R. Pitts from voting or otherwise performing his duties as a director of the Bank or chairing meetings of the Board.

12. General Compliance Function

- A. By no later than August 31, 2004, the Board shall adopt and submit to the Regional Director a written Policy of Internal Controls, acceptable to the Regional Director, that is designed to ensure that there is proper monitoring of regulatory compliance and risk assessments, including board oversight and adequate documentation of tests, findings, and corrective actions, in accordance with the guidelines of Section 340 of the OTS Thrift Activities Handbook. The Bank shall comply with the Policy of Internal Controls.
- B. By no later than August 31, 2004, the Board shall confirm to the Regional Director in writing that it has, subject to the requirements of subsection 10.E of this Order, employed an independent (as defined in Section 17 of this Order), qualified Compliance Officer or has retained a qualified compliance-consulting firm to provide the Bank with adequate compliance monitoring services regarding all applicable regulatory issues.

13. Consumer Compliance Matters

- A. By no later than December 31, 2004, the Board shall submit to the Regional Director written confirmation that the Bank has conducted enhanced training and internal compliance reviews in order to adequately ensure that all disclosures required by the Truth in Lending Act and the regulations promulgated thereunder (Regulation Z of the Board of Governors of the Federal Reserve System) shall be provided in a timely and accurate manner.
- B. By no later than June 30, 2004, the Board shall submit to the Regional Director written confirmation that (1) the required provider lists have been developed for each of the geographical areas in which the Bank does business and (2) each good faith estimate disclosure includes the appropriate required providers list as required by the Real Estate Settlement Procedures Act and the regulations promulgated thereunder.
- C. By August 31, 2004, the Board shall establish and adopt a new program (Compliance Program), acceptable to the Regional Director, for the purpose of ensuring compliance with all applicable consumer and public-interest related laws and regulations, including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, and the applicable regulations implementing these statutory provisions or otherwise promulgated thereunder. The Bank shall comply with the Compliance Program.
- D. The Compliance Program shall provide for written policies and procedures that set forth the requirements of the applicable laws and regulations, that incorporate OTS policy guidelines and that, at a minimum, include:
 - 1. task-specific procedures and internal controls to ensure that transactions are conducted and recorded in compliance with legal obligations and customer service goals;
 - 2. a process of supervising the day-to-day or week-to-week functioning of the Bank's compliance systems to assure real-time execution in accordance with the Bank's program standards;
 - 3. the periodic review of system records and operations to identify transactional violations and program deficiencies;
 - 4. the arrangement of responsibility, authority and reporting relationships that provide direction to the Bank's staff for implementing the Compliance Policy and apprise the Bank's senior executive officers and Board of performance with the Compliance Program;

5. a process of addressing consumer complaints, remedying regulatory violations, amending procedures and controls, correcting internal oversight deficiencies, and implementing the Compliance Policy and system revisions or updates; and
6. the communication of the Compliance Policy and other procedures, directives, regulatory requirements, product information, and service goals, including such communication as is necessary to obtain and maintain staff expertise.

14. Information Technology

- A. By no later than September 30, 2004, the Board shall ensure that an adequate information technology (IT) audit risk assessment is performed for the Bank by a person qualified to conduct such an assessment.
- B. By no later than September 30, 2004, the Board shall adopt and submit to the Regional Director a written and documented IT audit plan and guidelines (IT Audit Plan), acceptable to the Regional Director, that outlines the Bank's audit strategy in conformity with the Federal Financial Institutions Examinations Council (FFIEC) guidelines. The Bank shall comply with the IT Audit Plan.
- C. By no later than September 30, 2004, the Board shall adopt and submit to the Regional Director a written evaluation of the potential conflict of interest situation regarding DD&F Consulting Groups. This evaluation shall address the appropriateness or inappropriateness of using DD&F Consulting Groups for the Bank's IT audit functions and set forth adequate written documentation in support of this determination.
- D. By no later than September 30, 2004, the Board shall submit to the Regional Director written confirmation that a risk assessment of the exposure created by the absence of an IT test environment has been conducted and documented. This written confirmation shall further confirm that the Board has reviewed the results of the risk assessment and note the Board's approval and acceptance of the risk and mitigating considerations (if any).

BOARD OF DIRECTORS

15. Director and Board Responsibility

- A. Notwithstanding the requirements of this Order that the Board submit various matters to the Regional Director for the purpose of receiving approval, notice of non-objection, or notice of acceptability, such regulatory oversight does not derogate or supplant each individual member's continuing fiduciary duty. The Board shall have the ultimate responsibility for overseeing the safe and sound operation of the Bank at all times, including compliance with the determinations of the Regional Director as required by this Order.
- B. The Board further shall oversee the safe and sound operation of the Bank at all times and shall take all reasonable and prudent actions necessary to satisfy this

responsibility.

16. Compliance with Order

- A. The Board and officers of the Bank shall take immediate action to cause the Bank and its subsidiaries to comply with the terms of this Order and shall take all actions necessary or appropriate thereafter to cause the Bank and its subsidiaries to continue to carry out the provisions of this Order.
- B. The Board, on a quarterly basis, beginning with the third calendar quarter of calendar year 2004, shall adopt a board resolution (Compliance Resolution), formally resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding calendar quarter, the Bank has complied with each provision of this Order currently in effect, except as otherwise stated. The Compliance Resolution shall specify in detail how, if at all, full compliance was found not to exist; and identify all notices of exemption or non-objection issued by the Regional Director that were outstanding as of the date of its adoption.
- C. The minutes of the meeting of the Board shall set forth the following information with respect to the adoption of each Compliance Resolution: (i) the identity of each director voting in favor of its adoption; and (ii) the identity of each director voting in opposition to its adoption or abstaining from voting thereon, setting forth each director's reasoning for opposing or abstaining.
- D. The Bank shall provide to the Regional Director a certified true copy of each Compliance Resolution as adopted by the Board within ten calendar days of the Board meeting at which the Compliance Resolution was adopted. The Board, by virtue of the Bank's submission of a certified true copy of each such Compliance Resolution to the Regional Director, shall be deemed to have certified to the accuracy of the statements set forth in each Compliance Resolution, except as provided below. In the event that one or more Directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of the Bank.
- E. The Board shall promptly respond to any request from OTS for documents that the OTS requests to demonstrate compliance with this Order.

MISCELLANEOUS

17. Definitions

- A. All technical words or terms used in this Order and Stipulation for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, Home Owners' Loan Act (HOLA), Federal Deposit Insurance Act (FDIA) or OTS Publications. Any such technical words or terms used in this Order and

undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Publications shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

- B. As used in this Order, the term "independent" means certified unanimously by the Board, in a written certification signed by each member of the Board, and submitted to the Regional Director, that the person (1) was always independent of the Bank and its subsidiaries prior to June 1, 2004, and (2) is and always has been independent of the Bank's affiliates (including its holding company), independent of all officers, directors, employees and stockholders (and members, partners, and similar interest holders) of the Bank (and its subsidiaries) and each of those affiliates, and independent of anyone other than the Bank (or its subsidiaries) who may have an interest in the matter at issue. In order to be independent of a person or company, a person shall not have engaged in any material transaction with that person or company, or been otherwise employed or engaged by that person or company.
- C. For purposes of this Order, nothing shall be deemed "acceptable" to the Regional Director unless the Regional Director has stated in writing that it is acceptable or has stated in writing that there is no objection to it.

18. Successor Statutes, Regulations, Guidance, Amendments

Reference in this Order to provisions of statutes, regulations, and OTS Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date of this Order and references to successor provisions as they become applicable.

19. Effective Date

This Order is and shall become effective on the Effective Date, as shown in the caption hereof.

20. Notices

- (a) Except as otherwise provided herein, any request, demand, authorization, directive, notice, consent, waiver or other document provided or permitted by the Order to be made upon, given or furnished to, delivered to, or filed with:
 - (i) the OTS, by the Bank, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Director, Office of Thrift Supervision, Department of the Treasury, 225 East John Carpenter Freeway, Suite 500, Irving, Texas 75062-2327 or telecopied to (972) 277-9501 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address;

(ii) the Bank, by the OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, or sent via overnight delivery service or physically delivered, in each case addressed to the Bank at 2600 South Thompson, Springdale, Arkansas 72764.

(b) Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service or telecopy, and upon delivery, if by physical delivery. If there is a dispute about the date on which a written notice has been received by a party to this Order, then, in the event such notice was sent by United States mail, there shall be a presumption that the notice was received two Business Days after the date of the postmark on the envelope in which the notice was enclosed.

21. **Time Limits**

Time limitations for compliance with the terms of this Order run from the Effective Date, unless otherwise noted. The Regional Director may extend any time limits set forth in this Order by specifically granting that extension in writing.

22. **No Violations Authorized; OTS Not Restricted**

Nothing in this Order or the Stipulation shall be construed as: (a) allowing the Bank to violate any law, rule, regulation, or policy statement to which it is subject, or (b) restricting or estopping the OTS from taking any action(s), including without limitation any actions that it believes are appropriate in fulfilling the responsibilities placed upon it by law.

23. **Effect of Headings**

The Section Headings herein are for convenience only and shall not affect the construction hereof.


24. **Incorporation**

The Stipulation is made a part hereof and is incorporated herein by this reference.

25. **Duration, Termination or Suspension of Order**

The Stipulation and the Order shall remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director, Deputy Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: 
Frederick R. Casteel
Regional Director
Midwest Region

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
)

UNITED BANK
Springdale, Arkansas
OTS Docket No. 07756

Order No.: MWR-04-11

Date: July 2, 2004

STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against **UNITED BANK, Springdale, Arkansas** (Bank or Association), OTS Docket No. 07756, pursuant to 12 U.S.C. § 1818(b)¹, and

WHEREAS, the Bank desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, except as to Jurisdiction, Paragraph 1, below, which is admitted, hereby stipulates and agrees to the following:

1. Jurisdiction

- A. The Bank is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1467a. Accordingly, it is a "depository institution" as that term is defined in 12 U.S.C. § 1813(c).
- B. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain an administrative cease and desist proceeding against such savings association. Therefore, the Bank is subject to the jurisdiction of the OTS to initiate and maintain cease and desist proceedings against it pursuant to 12 U.S.C. § 1818(b). The Deputy Director of the OTS, pursuant to delegated authority from the Director of OTS, has delegated to the OTS Midwest Regional Director or his/her designee (Regional Director) the authority to issue cease and desist orders where the Association has consented to the issuance of the orders.

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

2. OTS Findings of Fact

Based on the Report of Examination of the Bank as of March 15, 2004, and the Report of Examination for Information Technology for the Bank as of March 8, 2004, (aggregately, the ROE), OTS finds that the Bank violated:

- A. Section 560.101 of the OTS Regulations, 12 C.F.R. § 560.101 (regarding real estate lending standards);
- B. Section 560.170 of the OTS Regulations, 12 C.F.R. § 560.170 (regarding records for lending transactions);
- C. Section 562.1 of the OTS Regulations, 12 C.F.R. § 562.1 (regarding financial reporting);
- D. Section 563.39 of the OTS Regulations, 12 C.F.R. § 563.39 (regarding employment contracts);
- E. Section 563.41 of the OTS Regulations, 12 C.F.R. § 563.41 (regarding transactions with affiliates, including but not limited to documentation of transactions with affiliates);
- F. Section 563.161 of the OTS Regulations, 12 C.F.R. § 563.161 (regarding management and financial policies);
- G. Section 563.170(c) of the OTS Regulations, 12 C.F.R. § 563.170(c) (regarding books and records);
- H. The guidelines set forth in Section II.A.1 of Appendix A to Part 570 of the OTS Regulations, 12 C.F.R. Part 570 (regarding organizational structure);
- I. The guidelines set forth in Section II.A.2 of Appendix A to Part 570 of the OTS Regulations, 12 C.F.R. Part 570 (regarding loan documentation);
- J. Sections 226.17, 226.18, and 226.19 of Regulation Z of the Board of Governors of the Federal Reserve System, 12 C.F.R. §§ 226.17, 226.18, and 226.19 (regarding Truth in Lending);
- K. Sections 3500.7, 3500.8, and 3500.21 of Regulation X of the Department of Housing and Urban Development, 24 C.F.R. §§ 3500.7, 3500.8, and 3500.21 (regarding the Real Estate Settlement Procedures Act);
- L. Sections 202.9, 202.13, and 202.14 of Regulation B of the Board of Governors of the Federal Reserve System, 12 C.F.R. §§ 202.9, 202.13, and 202.14 (regarding Equal Credit Opportunity); and

M. Section 615(a) of the Federal Credit Reporting Act, 12 U.S.C. § 1681m(a).

3. **Consent**

The Association consents to the issuance by the OTS of the accompanying Consent Order to Cease and Desist for Affirmative Relief (Order). It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. **Finality**

The Order is issued under 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director, it shall be a final order, effective and fully enforceable by OTS under the provisions of 12 U.S.C. § 1818(i).

5. **Waivers**

The Bank waives the following:

- A. the right to be served with a written notice of OTS's charges against it as provided by 12 U.S.C. § 1818(b);
- B. the right to an administrative hearing of OTS's charges against it as provided by 12 U.S.C. § 1818(b);
- C. the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;
- D. any and all claims against OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and
- E. the right to assert this proceeding, its consent to the issuance of the Order, the issuance of the Order, the payment of any monies or the provision of any other financial relief as contemplated by the Order as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. Other Governmental Actions Not Affected

The Bank acknowledges and agrees that its consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only, as set forth in Paragraph 2, OTS Findings of Fact, hereof. The Bank acknowledges and agrees that its consent to the issuance of the Order does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against or other proceeding, civil or criminal, that may be or has been brought by OTS or another governmental entity. Further, the issuance of this Order does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against or other proceeding, civil or criminal, that may be or has been brought by OTS or any other governmental entity against any institution-affiliated party of the Bank.

7. Miscellaneous

- A. The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.
- B. In case any provision of the Stipulation or Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.
- C. All references to the OTS or the Bank in this Stipulation and the Order shall also mean any of the OTS's or Bank's predecessors, successors, and assigns.
- D. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the construction hereof.
- E. The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.
- F. This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Deputy Director, Regional Director or other authorized representative.

8. Signature of Directors

Each Director of the Bank's Board of Directors signing this Stipulation attests that he/she voted in favor of a resolution authorizing the execution of the Stipulation. A copy of the resolution of the Board of Directors of United Bank authorizing execution of this Stipulation shall be delivered to OTS, along with the executed original of this Stipulation.

WHEREFORE, United Bank, Springdale, Arkansas, by a majority of its directors, execute this Stipulation and Consent to the issuance of an Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

By:



Frederick R. Casteel
Midwest Regional Director


Effective Date: 7-2-04

United Bank

Springdale, Arkansas

Accepted by a majority of its directors:

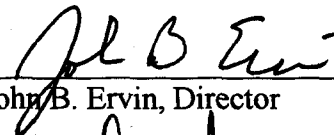
By:



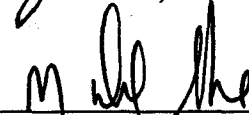
Jeffrey L. Lynch, President and
Director



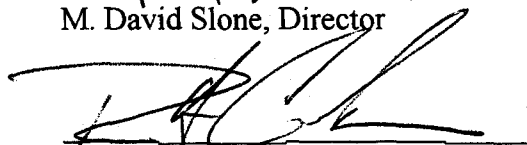
Donald R. Pitts
Chairman of the Board



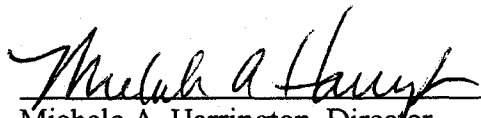
John B. Ervin, Director



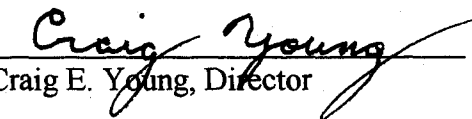
M. David Slone, Director



Robert Corscadden, Director



Michele A. Harrington, Director



Craig E. Young, Director